NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

CLARENCE THOMAS, OF MARYLAND, TO BE CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MARCH 31, 1982

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NOMINATION

WEDNESDAY, MARCH 31, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:47 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch, Eagleton, and Pell.

Also present: Senator Danforth.

The CHAIRMAN. We will call the committee to order.

I apologize to you, Senator Danforth, and, of course, to you, Mr. Thomas, for being a little bit late here this morning, but it seems like we all have these conflicts come up at the last minute.

Mr. Thomas, you have been nominated to be Chairman of the Equal Employment Opportunity Commission, the agency Congress created in 1964 to remedy employment discrimination.

That national goal of eliminating discrimination in employment is as important today as it was then, and we expect this administration to do everything it can to pursue that goal with vigor.

The administration has started to appoint strong leadership at the EEOC, and I am impressed with the dramatic improvements they have made in solving the problems they inherited and the planned changes in direction now taking place. There is a positive momentum and rapid changes taking place there, which I think are important for the rejuvenation of that agency. That momentum must be maintained, and I personally hope you will be able to keep that momentum and direction going as you arrive there.

You came before this committee to be confirmed 10 months ago as Assistant Secretary for Civil Rights with the Department of Education. While that position was primarily a management-type position, you are now nominated for a more difficult and more precarious position which will tax your good judgment and capacity to distinguish between policymaker and administrator, and I feel personally that you are prepared to exercise that judgment.

Mr. Thomas is currently Assistant Secretary for Civil Rights with the Department of Education. He graduated from Holy Cross College in 1971; has a Yale Law School degree in 1974. He has been employed as assistant attorney general of Missouri, an attorney with Monsanto, legislative assistant with our own Senator Danforth, who has spoken highly to me about him, and I have high regard for the Senator.

Senator Eagleton, do you have any comments?

Senator EAGLETON. No, I have no opening statement, Mr. Chairman, thank you.

The CHAIRMAN. Senator Danforth, we will turn the time to you.

Senator DANFORTH. Mr. Chairman, thank you very much. I appreciate the opportunity of being here, and I also appreciate the timely fashion in which this committee is holding hearings on the nomination of Clarence Thomas to be Chairman of the EEOC.

The story of Clarence Thomas is really the story of the American dream. Clarence Thomas is the product of a broken home. He was raised by his grandparents in Savannah, Ga. They put him through the Catholic school system in Savannah. From there, he went to the Benedictine Monastery in northwest Missouri, Conception, Mo. He was a seminarian for a year.

He went from the monastery to Holy Cross University in Massachusetts. He is now a member of the board of trustees of Holy Cross. He graduated from Holy Cross and went to Yale Law School and graduated from Yale Law School in 1974.

When he was a law student, I went on a recruiting mission to various law schools and recruited at Yale and convinced Clarence Thomas that his experience at Conception Abbey was just so great he had to return to Jefferson City, and he was willing to do so. He was a lawyer, an assistant attorney general, on the staff of my office and the office in which Senator Eagleton served a number of years ago. He did an excellent job as an attorney—trying cases, arguing appeals, writing legal opinions, and providing day-to-day legal advice for various State agencies. He is a very fine lawyer.

He was then hired away from me by the private sector. He went to work for Monsanto in St. Louis and was in the legal department of Monsanto. After my election to the Senate, I communicated with Clarence and asked him if he would be good enough to leave the private sector and come back to work for me again as a legislative assistant in Washington, which is what he did.

In my office, he handled energy matters, environmental matters, and did a first-rate job; then, of course, after President Reagan was elected, he was appointed the Assistant Secretary of Education for Civil Rights.

Clarence Thomas, as I am sure he will explain to you, is a man of conservative political philosophy. He is also a person of very high character, very fine judgment, a fine mind, and a person who, I am convinced, is totally committed to the cause of improving educational opportunity and employment opportunity for all the people of this country.

Therefore, it is a privilege for me to be here by his side and to recommend him to this committee most highly for confirmation as Chairman of the EEOC.

I regret, Mr. Chairman, that I cannot stay here through these proceedings.

The CHAIRMAN. We understand that.

Senator DANFORTH. I, unfortunately, have a subcommittee meeting which I am chairing and which starts at 9:45. I think I might miss the start of that hearing, so I am going to have to leave, but I very much appreciate the opportunity of being here with you.

The CHAIRMAN. Well, thank you, Senator Danforth. We appreciate your being here, and your opinion carries great weight with

this committee, I believe, and we certainly appreciate your taking the time out of what we know is a very busy schedule. It is a compliment to you, Mr. Thomas, as well. Thank you for being with us.

I will put into the record at this time a statement by Senator John East:

Mr. Chairman, I wish to express my strong support for the nomination of Clarence Thomas to serve as Chairman of the Equal Employment Opportunity Commission. Mr. Thomas is well qualified to serve as Chairman of the Commission. In addition, I am convinced that through Mr. Thomas' leadership the Commission will do a better job in performing its statutory roles, eliminating intentional discrimination, and ensuring equality of opportunity for all Americans.

Mr. Thomas, would you care to make a statement at this point?

Mr. THOMAS. Yes, Senator.

The CHAIRMAN. First, Senator Pell, did you have a statement that you would care to make?

Senator PELL. Thank you very much. I will need to leave in 5 minutes.

I had the opportunity to talk with Mr. Thomas at some length in my office the other day and came to the conclusion that Mr. Thomas has a real belief in the law, is intelligent and of good character.

He, I think, is a lot more conservative than I am, but then so is the President. [Laughter.]

I intend to support him. While his philosophy may be more conservative, his character and his intelligence, I think, are of the highest order.

Senator EAGLETON. Mr. Chairman, since Senator Pell has to leave in 5 minutes, I wonder, if he had a question or two, if he could be allowed a minute.

The CHAIRMAN. Sure, I would be glad to let him go ahead.

Senator PELL. I have no further questions. Thank you.

The CHAIRMAN. Then, Mr. Thomas, we will take your statement at this time.

STATEMENT OF CLARENCE THOMAS, NOMINEE TO BE CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. THOMAS. Mr. Chairman, I have a prepared statement which I would like to read for the record.

The CHAIRMAN. That will be fine.

Mr. THOMAS. It is an honor and a privilege to appear before this committee to seek your approval of my nomination to the Equal Employment Opportunity Commission.

The role which the EEOC plays in assuring equal employment opportunity through enforcement of title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, and section 501 of the Rehabilitation Act is essential to the protection of the rights of the citizens of this country.

The laws which the Commission is charged with enforcing were developed through congressional debate and enactment as well as Federal court interpretation of these laws and the Constitution. If confirmed, I pledge my commitment to the enforcement of these laws.

During the early years of my life in Savannah, Ga., I experienced the injustices of segregation. Through the protection offered by the

civil rights laws, the awareness which they brought and, to some extent, my own perseverance, I was able to go to college and later to law school. Many other individuals were not as fortunate as I was. They were unable to take advantage of the newly offered access to this country's educational and business institutions.

Today, employment discrimination, coupled with the vestiges of past discriminatory practices, continues to prevent many citizens from becoming a part of the mainstream of the American economy. Consequently, when we address instances of employment discrimination in modern employment practices, we cannot ignore years of discrimination that certain groups suffered because of their race, color, sex, or religion. I believe that I will bring to the Commission the appropriate understanding of and sensitivity to the problems of employment discrimination in this country.

Aside from my own personal commitment to civil rights, I believe that my professional qualifications would enable me to perform the duties of Chairman of the EEOC. As a lawyer, I have worked in the private sector and at the State and Federal levels of government, including 1½ years as a legislative assistant to Senator John C. Danforth.

For the past 9 months, I have served as Assistant Secretary for Civil Rights at the Department of Education. In this position, both my understanding of civil rights laws and issues and my managerial skills have been heightened. My experience at the Office for Civil Rights will prove invaluable to me at the EEOC. Though the EEOC is a larger organization than the one I am currently charged with administering, I am confident that, if confirmed, I can meet the challenges of this position with the aid of the staff at the Commission and the cooperation of Congress.

I understand that operating an organization of 3,000 employees is difficult. I also understand that EEOC management has been a problem both with this committee and the GAO. I believe strongly that the beneficiaries of laws aimed at eliminating unlawful discrimination in employment are better served when the EEOC is properly managed.

For these reasons, if confirmed, I plan to make management and the efficient operation of the Commission one of my top priorities. Though my preliminary observations indicate that some change may be warranted, whatever management decisions are ultimately made at the Commission must be approached with respect for the organization and its responsibilities.

I have also had an opportunity to consider some of the substantive and policy issues which the Commission must address in the near future. While I believe it would be premature to comment on these issues, I will comment briefly on my understanding of how the Commission makes decisions on substantive and policy issues.

First let me say that I believe that the EEOC is and should remain the body which sets the Government's policy on employment discrimination. Second, the EEOC is a Commission of five members. It is my sincere belief that no single member of the Commission should control the policy of the Commission.

Finally, the policy measures taken by the Commission should be based on its authority under existing laws and should not attempt

to circumvent or unilaterally change these laws. Essentially, the Commission is an enforcement agency and should function as such.

I thank the members of this committee for consideration of my nomination and will be happy to answer questions you have at this time.

[The prepared statement and biographical sketch of Mr. Thomas follows:]

STATEMENT OF CLARENCE THOMAS
NOMINEE TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MARCH 30, 1982

IT IS AN HONOR AND A PRIVILEGE TO APPEAR BEFORE THIS COMMITTEE TO SEEK YOUR APPROVAL OF MY NOMINATION TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. THE ROLE WHICH THE EEOC PLAYS IN ASSURING EQUAL EMPLOYMENT OPPORTUNITY THROUGH ENFORCEMENT OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE EQUAL PAY ACT, THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AND SECTION 501 OF THE REHABILITATION ACT IS ESSENTIAL TO THE PROTECTION OF THE RIGHTS OF THE CITIZENS OF THIS COUNTRY. THE LAWS WHICH THE COMMISSION IS CHARGED WITH ENFORCING WERE DEVELOPED THROUGH CONGRESSIONAL DEBATE AND ENACTMENT AS WELL AS FEDERAL COURT INTERPRETATION OF THESE LAWS AND THE CONSTITUTION. IF CONFIRMED, I PLEDGE MY COMMITMENT TO THE ENFORCEMENT OF THESE LAWS.

DURING THE EARLY YEARS OF MY LIFE IN SAVANNAH, GEORGIA, I EXPERIENCED THE INJUSTICES OF SEGREGATION. THROUGH THE PROTECTIONS OFFERED BY THE CIVIL RIGHTS LAWS, THE AWARENESS WHICH THEY BROUGHT AND, TO SOME EXTENT, MY OWN PERSERVERENCE, I WAS ABLE TO GO TO COLLEGE, AND LATER TO LAW SCHOOL. MANY OTHER INDIVIDUALS WERE NOT AS FORTUNATE AS I WAS. THEY WERE UNABLE TO TAKE ADVANTAGE OF THE NEWLY OFFERED ACCESS TO THIS COUNTRY'S EDUCATIONAL AND BUSINESS INSTITUTIONS. TODAY, EMPLOYMENT DISCRIMINATION COUPLED WITH THE VESTIGES OF PAST DISCRIMINATORY PRACTICES CONTINUE TO PREVENT MANY CITIZENS FROM BECOMING A PART OF THE MAINSTREAM OF THE AMERICAN ECONOMY. CONSEQUENTLY, WHEN WE ADDRESS INSTANCES OF

EMPLOYMENT DISCRIMINATION IN MODERN EMPLOYMENT PRACTICES, WE CANNOT IGNORE YEARS OF DISCRIMINATION THAT CERTAIN GROUPS SUFFERED BECAUSE OF THEIR RACE, COLOR, SEX, OR RELIGION. I BELIEVE THAT I WILL BRING TO THE COMMISSION THE APPROPRIATE UNDERSTANDING OF AND SENSITIVITY TO THE PROBLEMS OF EMPLOYMENT DISCRIMINATION IN THIS COUNTRY.

ASIDE FROM MY OWN PERSONAL COMMITMENT TO CIVIL RIGHTS, I BELIEVE THAT MY PROFESSIONAL QUALIFICATIONS WOULD ENABLE ME TO PERFORM THE DUTIES OF CHAIRMAN OF THE EEOC. AS A LAWYER, I HAVE WORKED IN THE PRIVATE SECTOR AND AT THE STATE AND FEDERAL LEVELS OF GOVERNMENT, INCLUDING 1 1/2 YEARS AS A LEGISLATIVE ASSISTANT TO SENATOR JOHN C. DANFORTH. FOR THE PAST 9 MONTHS, I HAVE SERVED AS ASSISTANT SECRETARY FOR CIVIL RIGHTS AT THE DEPARTMENT OF EDUCATION. IN THIS POSITION, BOTH MY UNDERSTANDING OF CIVIL RIGHTS LAWS AND ISSUES AND MY MANAGERIAL SKILLS HAVE BEEN HEIGHTENED. MY EXPERIENCE AT THE OFFICE FOR CIVIL RIGHTS WILL PROVE INVALUABLE TO ME AT THE EEOC. THOUGH THE EEOC IS A LARGER ORGANIZATION THAN THE ONE I AM CURRENTLY CHARGED WITH ADMINISTERING, I AM CONFIDENT THAT IF CONFIRMED, I CAN MEET THE CHALLENGES OF THIS POSITION WITH THE AID OF THE STAFF AT THE COMMISSION AND THE COOPERATION OF CONGRESS.

I UNDERSTAND THAT OPERATING AN ORGANIZATION OF 3000 EMPLOYEES IS DIFFICULT. I ALSO UNDERSTAND THAT EEOC MANAGEMENT HAS BEEN A CONCERN OF THIS COMMITTEE AND GAO. I BELIEVE STRONGLY THAT THE BENEFICIARIES OF LAWS AIMED AT ELIMINATING UNLAWFUL DISCRIMINATION

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IN EMPLOYMENT ARE BETTER SERVED WHEN THE EEOC IS PROPERLY MANAGED. FOR THESE REASONS, IF CONFIRMED, I PLAN TO MAKE MANAGEMENT AND THE EFFICIENT OPERATION OF THE COMMISSION ONE OF MY TOP PRIORITIES. THOUGH MY PRELIMINARY OBSERVATIONS INDICATE THAT SOME CHANGE MAY BE WARRANTED, WHATEVER MANAGEMENT DECISIONS ARE ULTIMATELY MADE AT THE COMMISSION MUST BE APPROACHED WITH RESPECT FOR THE ORGANIZATION AND ITS RESPONSIBILITIES.

I HAVE ALSO HAD AN OPPORTUNITY TO CONSIDER SOME OF THE SUBSTANTIVE AND POLICY ISSUES WHICH THE COMMISSION MUST ADDRESS IN THE NEAR FUTURE. WHILE I BELIEVE IT WOULD BE PREMATURE TO COMMENT ON THESE ISSUES, I WILL COMMENT BRIEFLY ON MY UNDERSTANDING OF HOW THE COMMISSION MAKES DECISIONS ON SUBSTANTIVE AND POLICY ISSUES. FIRST LET ME SAY THAT I BELIEVE THAT THE EEOC IS AND SHOULD REMAIN THE BODY WHICH SETS THE GOVERNMENT'S POLICY ON EMPLOYMENT DISCRIMINATION. SECONDLY, THE EEOC IS A COMMISSION OF FIVE MEMBERS. IT IS MY SINCERE BELIEF THAT NO SINGLE MEMBER OF THE COMMISSION SHOULD CONTROL THE POLICY OF THE COMMISSION. FINALLY, THE POLICY MEASURES TAKEN BY THE COMMISSION SHOULD BE BASED ON ITS AUTHORITY UNDER EXISTING LAWS AND SHOULD NOT ATTEMPT TO CIRCUMVENT OR UNILATERALLY CHANGE THESE LAWS. ESSENTIALLY THE COMMISSION IS AN ENFORCEMENT AGENCY AND SHOULD FUNCTION AS SUCH.

I THANK THE MEMBERS OF THIS COMMITTEE FOR CONSIDERATION OF MY NOMINATION AND WILL BE HAPPY TO ANSWER QUESTIONS YOU HAVE AT THIS TIME.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: THOMAS (LAST) CLARENCE (FIRST) (OTHER)

Position to which nominated: Member - Equal Employment Opportunity Commission

Date of nomination: 3/17/82

Date of birth: 23 (DAY) June (MONTH) 1948 (YEAR)

Place of birth: Savannah, Georgia

Marital status: Married

Full name of spouse: Kathy Grace Thomas

Name and ages of children: Jamal Adeen Thomas - 8 years old

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Immaculate Conception Seminary, Conception Junction	9/67-6/68	None	
Holy Cross College Worcester, Massachusetts	9/68 - 6/71	AB	6/4/71
Yale Law School	9/71 - 5/74	JD	5/74

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Alpha Sigma Nu (National Jesuit Honor Society)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
Missouri Bar Association	None	9/74 to Present
Metropolitan Bar Association	None	1978 - 1979
The New Coalition of Economic and Social Change	Director (will resign upon confirmation)	5/9/81 - Present

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

(1) Assistant Attorney General - 6/75-1/77
Attorney General of Missouri
Supreme Court Building, Jefferson City, Missouri

(2) Attorney - 1/77 - 8/79
Monsanto Company
800 North Lindbergh
St. Louis, Missouri

(3) Legislative Acsistant - ~~1979~~ 8/79 - 6/81
Senator John C. Danforth
460 Russell, Senate Office Building
Washington, D.C.

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

NONE

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NONE

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Member - Republican Party

1979 - $100.00 contribution to Dittmeier for Prosecutor of St. Louis County, Missouri

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not Applicable

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No Plans

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not Applicable

The CHAIRMAN. Thank you, Mr. Thomas.

One of the serious problems which has plagued the Commission in the past and one which we are going to be watching very closely has been the tendency for whoever is the chairman to get too involved in the administrative aspects of the agency rather than performing his or her function as a policy formulator and delegator.

So I am pleased to hear you say that all policy should be formulated with the involvement of all five Commission members.

Could you please detail how you plan to distinguish your role as Chairman from that of the Executive Director and how you plan to involve the other Commissioners in formulating policy for administering that agency? I think this is a critical question, and I hope you will take some time and answer it for us.

Mr. THOMAS. The Executive Director, as I understand it, of the EEOC, should be in charge of the day-to-day, nuts-and-bolts management of the organization—the performance reviews, the tracking and monitoring, the budget, for example, and administration of the organization on a day-to-day basis.

The Chairman, of course, has to give direction to the Executive Director and has to give guidance to the Executive Director even on these matters. In addition to that, the Chairman is responsible for many of the overall policies of the organization, including policies which the five members of the Commission would, together or as a group, be responsible for.

So the initial differentiation would be that the Chairman would give guidance and leadership to the Executive Director but not necessarily be involved in the day-to-day, nuts-and-bolts activity of running the organization.

The Chairman would also, again, as I alluded to, have the responsibility of a Commissioner and of the Chairman of the Commission as they meet as a five-member Commission.

With respect to keeping the other Commissioners involved, again I think that the organization is a Commission; it has to function as a Commission; it is not a dictatorship or anything of that sort. They should be kept informed about the administrative policies, the managerial and organizational policies, in addition to the substantive policies of the organization.

I intend personally to see to it that they are provided the information necessary to make informed decisions about administrative matters, organizational matters, managerial matters, as well as the decisions which they would make about the substantive policies of the organization.

The CHAIRMAN. What safeguards will you take to assure you will not get bogged down with the day-to-day administration of the agency, which is the function of the Executive Director? I mean, you have listed some of them. Are there any other safeguards that you would take at this time that you would care to mention?

Mr. THOMAS. As a manager, one safeguard that I take now is to distinguish between the day-to-day management. I think it has to be absolutely clear that you delegate authority and you have feedback from the individuals and that you have accountability, et cetera.

One can get bogged down in day-to-day activities simply by not delegating sufficient authority and by not holding the individuals to whom you delegate the authority accountable for their actions.

I think that that is perhaps the single most important safeguard in not getting mired in the day-to-day activities of an organization.

The CHAIRMAN. Now, some groups have raised some questions about your sensitivity to the problems of Hispanics and women. Could you give us any indications as to what your attitudes are there and how you might help to allay those concerns?

Mr. THOMAS. For the first time, I believe, in my tenure at the Department of Education, and not until I was nominated for this job, was I apprised that this assessment of my sensitivity was there. I am certain that with respect to my attitude toward Hispanic individuals or Hispanic citizens of this country, it is clear from my relationship with the Hispanic members of my staff that this is not true, and I will continue to see to it that my actions do not in any way give credence to this kind of an assessment.

With respect to women, we have had some differences on certain policy issues, but I don't think that, beyond these differences that we have had on these policy issues, it can be said with any degree of legitimacy that I have been insensitive to their needs. It certainly is not evidenced from my actions toward them as a group or toward members of my staff.

The CHAIRMAN. Mr. Thomas, are you familiar with an organization called Image?

Mr. THOMAS. I have met with one individual from Image at one time after the President indicated that he intended to nominate me for this job.

The CHAIRMAN. Mr. David Montoya, who is president of Image, has written me a letter indicating, in his opinion, your unwillingness to pursue Hispanic cases brought to your attention in your current position, such as the New York case, to quote his letter, "which cited that school system for shortchanging services to Hispanics and blacks."

Now, he feels you have failed to pursue that case, and if that is true, why?

Mr. THOMAS. Well, I don't know what he is talking about, and that is totally without foundation.

The CHAIRMAN. As Chairman, one of the great pressures will be that of making yourself accessible to the public. Both Mr. Montoya and Mr. Ed Pina, who have worked closely with this committee, have alleged that you personally failed to return their calls. Now, I understand that a little bit myself because I get as many as 700 a day some days.

As you assume this position, I assume that you will be open and available and willing to meet with any of the leaders of these organizations which are trying to represent their respective people and organizations. Will you have any difficulties there?

Mr. THOMAS. Well, first of all, I have no record that either of those individuals ever called me. Second, I do intend to be accessible.

The CHAIRMAN. All right. Attorney General William French Smith has stated that the Reagan administration will seek remedies other than hiring quotas and goals in employment discrimina-

tion cases. The head of the Justice Department Civil Rights Division, Assistant Attorney General William Bradford Reynolds, has echoed these statements repeatedly before our committee and elsewhere.

Now, obviously, this policy is contrary to the position of the EEOC in previous employment discrimination litigation, where remedial quotas and goals have been routinely sought. As Chairman, what approach will you take?

Mr. THOMAS. It is my view that there has been an overreliance on quotas in remedying past problems with respect to discrimination. I do not, however, believe that there should be a wholesale abandonment of any sort of numerical timetables, at least as monitoring devices. They are necessary in monitoring some sort of progress in certain areas.

I do not believe that the statistical parity that has been sought in certain instances should be the only way or the only remedies pursued in resolving civil rights violations.

The CHAIRMAN. Let me ask one other question before turning to Senator Eagleton.

Within the past few years, several companies and universities have found themselves subject to duplicative enforcement proceedings based on the same claim for discriminatory conduct. At any given time, for example, a university might find itself subject to legal actions brought under title VI of the Civil Rights Act, title VII of the Civil Rights Act, and Executive Order 11-246 to remedy the same or a closely related instance of discrimination.

What steps will you take to insure that the Government's enforcement efforts are closely coordinated rather than brought in a hobgoblin fashion, with all the attendant expense, paperwork, and irritations that come from the past way of bringing these actions which many have complained about?

Mr. THOMAS. As I indicated in my prepared statement, I believe that the EEOC should be the lead agency in the area of employment discrimination, and as the lead agency it should assume the role of coordinating and assuring that these kinds of multiple-jurisdicational cases are not overly burdensome to the private sector. Sometimes, in some instances, these kinds of multiple-jurisdictional cases do cause problems, and these kinds of problems are unavoidable.

However, I do believe, as lead agency in the area of employment discrimination, that efforts can be made to mitigate or at least reduce the number of times that these sorts of things occur.

The CHAIRMAN. Well, thank you. I have a number of other questions I am going to submit in writing to you, but let's turn to Senator Eagleton at this time. We would like to have your answers back as quickly as you can, and we will keep the record open all day for any questions by other Senators on the committee that they would care to submit in written form to you.

Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman.

First off, Mr. Thomas, let's try to clarify if we can your role as Chairman of the EEOC. Under certain State laws, they have rotating chairmanships of some State commissions. Most States, howev-

er, have, in terms of statutory structure, a permanent chairman of a commission, permanent until he resigns or is replaced.

In terms of your statutory authorization to be Chairman of the EEOC, is your authorization to function as Chairman one whit different than the authorization of Mr. Volcker to serve as Chairman of the Federal Reserve System? I am not trying to trap you, but——

Mr. THOMAS. Could you repeat that for me, Senator? I didn't get your point.

Senator EAGLETON. Well, the point is that your statutorily created authority as Chairman of the Equal Employment Opportunity Commission is identical to, in terms of boilerplate statutory language, the chairmanship of the Federal Reserve System. So you are no more impotent, as Chairman of EEOC, than Mr. Paul Volcker is impotent as Chairman of the Fed. Would you so agree?

Mr. THOMAS. That is accurate, Senator.

Senator EAGLETON. I am pursuing Senator Hatch's line of questioning. Senator Hatch was casting you in the light of benign overseer of the EEOC and implying that the title "Chairman" was in essence a nullity. Quite to the contrary, when Congress set up the EEOC, it vested the Chairman with certain rights, privileges, and authorities to go with the job, and you will exercise all of the rights, all of the privileges, and all of the authorities that go with the position of Chairman. Is that not correct?

Mr. THOMAS. That is accurate, Senator.

Senator EAGLETON. Now, under Chairman Eleanor Holmes Norton, administrative and procedural reforms were introduced at EEOC which have become models for the entire Federal establishment. At the time the Reagan administration came into office on January 20, 1981, the old backlog of 100,000 cases had been reduced by more than two-thirds; the time to process an individual case had been reduced from 2 years to 4 months; and a new program for bringing class action cases against systemic discrimination had been built into the system. All of this was done under Eleanor Holmes Norton.

Do you intend to maintain the management systems instituted by Eleanor Holmes Norton in 1977 and brought to successful fruition during her term as Chairman of the EEOC?

Mr. THOMAS. Senator, I do not intend to prejudge the management efforts which I will undertake prior to my getting to the EEOC. However, some of the efforts that have been pursued under Mrs. Norton and have continued subsequent to her departure have been, as you indicate, successful. Those which are successful and those which are still successful should be maintained, and I don't intend to eliminate those which are successful. However, some may have become somewhat vestigial over a period of time and may need to be expanded upon, improved, refined, et cetera. Those, I think, should be subject to some sort of adjustments.

Senator EAGLETON. Very good.

In 1978, President Carter submitted, and Congress overwhelmingly endorsed, a reorganization plan which made the EEOC the lead agency for Federal equal employment programs and broadened its enforcement responsibility to include the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967.

Now, based on statements by Mr. William French Smith's Justice Department—he and Mr. Reynolds—it appears that the Department intends to extend its policies not only to cases within the Department's jurisdiction but to all of title VII enforcement.

Therefore, what are your views on coordination of EEOC activities and enforcement policies with the Department of Justice?

Mr. THOMAS. I believe, as I indicated on two occasions in this hearing, that the EEOC was established as the primary agency in the Federal Government to handle issues of employment discrimination, and I believe that that role should be enhanced and continued.

Senator EAGLETON. Would you have any reluctance, if you felt that Mr. Reynolds was overstepping his bounds or that Attorney General William French Smith was overstepping his bounds, in so informing them directly that you are the lead agency on employment matters, that you intend to function as the lead agency on employment matters, and that title VII enforcement is a very compelling responsibility of the EEOC?

Mr. THOMAS. No.

Senator EAGLETON. You would have no hesitancy in so informing them?

Mr. THOMAS. No.

Senator EAGLETON. Be prepared. [Laughter.]

In terms of philosophy, Mr. Thomas, of the following three individuals, which of these three individuals most closely comports to your own philosophy: Ayn Rand, Thomas Sowell, Martin Luther King?

Mr. THOMAS. I don't detect any mutual exclusivity in those choices.

Senator EAGLETON. Oh, I do. But you think the philosophies of those three individuals track coterminously?

Mr. THOMAS. I don't think that the philosophies of any of the three of those individuals track coterminously with my philosophy.

Senator EAGLETON. Well, do they track coterminously one onto the other?

Mr. THOMAS. With each other?

Senator EAGLETON. Yes.

Mr. THOMAS. I don't think so.

Senator EAGLETON. All right. Which of those three—Ayn Rand, Thomas Sowell, and Martin Luther King—most closely tracks with your philosophy?

Mr. THOMAS. Senator, that is a differentiation and an assessment that I don't think I am in a position to make at this point.

The CHAIRMAN. Could you be more specific, Tom? I mean, what are you talking about? Dr. King's ministerial work or Tom Sowell's economic work or Tom Sowell's work on welfare or Tom Sowell's work on the minimum wage? You know, what are you talking about? There are a lot of multifaceted aspects to each of these people.

Senator EAGLETON. Mr. Chairman, the witness does not need rehabilitation from you. You are not going to function as the Chairman of the EEOC; he is going to function as the Chairman of the EEOC.

The CHAIRMAN. Yes; but I am going to have something to say about it, I will tell you that, and this committee is going to have something to say about it. But all I am saying is that——

Senator EAGLETON. The witness knows full well what I am driving at.

The CHAIRMAN. Yes, but it is not a fair question.

Senator EAGLETON. The witness is a close disciple, philosophical disciple, of Thomas Sowell.

The CHAIRMAN. Well, I hope so.

Senator EAGLETON. He so informed me when he came into my office. He should be no more reluctant to state that publicly at this hearing than he is reluctant to state it at my office, and thus, if he tracks with the philosophy of Thomas Sowell, he does not track with the philosophy of Martin Luther King with respect to equal employment opportunity, with respect to equal access to educational facilities, with the whole thrust of equal access in the whole American way of life.

The CHAIRMAN. Well, Tom Sowell was an economist; Martin Luther King was a minister. So I doubt if they do track very closely together.

Senator EAGLETON. Both of them were philosophers in the political and philosophical sense, and you know it and the witness knows it.

The CHAIRMAN. At least Tom Sowell has done a scientific analysis of these things. But if you can answer that question—I wouldn't answer it, but if you can, go ahead. [Laughter.]

Senator EAGLETON. Don't you generally track philosophically with Thomas Sowell? Aren't you an admirer of his? There is nothing wrong with him. He is a patriotic American citizen. He is not on any FBI Ten Most Wanted lists.

The CHAIRMAN. As a matter of fact, he is one of the most literate people in America today. There is no question about that.

Mr. THOMAS. If your question to me, Senator, is, Are you an admirer of Thomas Sowell; are you——

Senator EAGLETON. There is nothing wrong with being that. I want to get your philosophy. It goes to the quality of equal employment enforcement as to what is the philosophical attitude of the Chairman, the most powerful position on the Commission, one of the most powerful positions in the Federal Government with respect to the enforcement of civil rights law. The philosophy of the administrator is an important thing to know.

Now, does your philosophy, in terms of matters affecting access to the opportunities that are offered in the American way of life, track rather closely with Prof. Thomas Sowell, a very distinguished American?

Mr. THOMAS. Stated that way, as opposed to the multiple choice question, yes; I think that is a matter of record. I do not think, though, that your assessment of Thomas Sowell's view of equal employment opportunity is accurate, nor have I, in any of my readings of his work and my discussion with him, ever detected any hesitance to his following the beliefs of Martin Luther King——

Senator EAGLETON. Well, we will get into that.

Mr. THOMAS [continuing]. From the standpoint of fighting discrimination in the society. In fact, he is a strong supporter of nondiscrimination laws, or antidiscrimination laws.

Senator EAGLETON. All right, let me read you a quote and tell me whether you think this quote came from Thomas Sowell or Martin Luther King:

Clearly one reason for treating race as special is the historic and traumatic experience of blacks, subject to slavery, discrimination, and degradation in American society. But even if this might justify a special policy for blacks, that is quite different from justifying a general principle, applicable wherever racial differences exist and readily extendable, logically or politically, to nonracially defined subjects of the population who choose to call themselves minorities, in open defiance of statistical facts in the case of women.

Now, in terms of recognized doctrinal philosophy, do you think that quote came from Martin Luther King?

Mr. THOMAS. That seems to be classic Tom Sowell.

Senator EAGLETON. That is classic Thomas Sowell, and I submit that any commonsensical person would say it is antithetical to anything Martin Luther King ever said.

All right, let me give you another one. Tell me if you think Martin Luther King ever said this or anything like this:

I believe that affirmative action programs cause other workers to underrate blacks because they often assume they hold jobs because of their race, not their ability. I believe that employment opportunities diminished when affirmative action programs were added in the 1970's, in part because employers hesitated to hire blacks for fear of being sued if they did not promote them.

Whose classical philosophy is that?

Mr. THOMAS. Well, since affirmative action is a concept that was generally popularized subsequent to the death of Martin Luther King, I would have to suggest that that is from Tom Sowell.

Senator EAGLETON. It is Thomas Sowell.

In short, blacks achieved the economic advances of the 1960's once the worst forms of discrimination were outlawed, and the only additional effect of quotas was to undermine the legitimacy of black achievements by making them look like gifts from the government.

Mr. THOMAS. That is Thomas Sowell.

Senator EAGLETON. Thomas Sowell.

Well, I once again submit for the record, Mr. Chairman, that the philosophical views of Martin Luther King and the philosophical views of Thomas Sowell are poles apart and that if one is a philosophical adherent to the one, one cannot be a philosophical adherent to the other.

The CHAIRMAN. But I think, Tom, that you would admit that this great society has lots of room for disparate views——

Senator EAGLETON. I could not agree more.

The CHAIRMAN [continuing]. And that Tom Sowell is one bright man. So was Martin Luther King.

Senator EAGLETON. He is a fine, honorable, sincere American citizen.

The CHAIRMAN. Well, for a minute, there, I was worried, because I am a disciple of Thomas Sowell, too.

Senator EAGLETON. Yes; and I would not want you Chairman of the EEOC. [Laughter.]

The CHAIRMAN. I would not want to be Chairman of the EEOC. I like this chairmanship. [Laughter.]

Senator EAGLETON. All right.

The CHAIRMAN. I don't know that you wouldn't. I might turn out to be a lot better than you think. [Laughter.]

But since we are talking mutually, I am not sure I want you as chairman of the EEOC, either.

Senator EAGLETON. Mr. Thomas, is the *Weber* case the law of the land?

Mr. THOMAS. It certainly is.

Senator EAGLETON. And, as the law of the land, until the Supreme Court writes to the contrary, will you adhere to the precepts of the *Weber* case in your enforcement duties at the EEOC?

Mr. THOMAS. As I indicated, Senator, it is my intention to enforce the laws as they are.

Senator EAGLETON. And the law, until changed, includes the *Weber* doctrine, does it not?

Mr. THOMAS. That is right.

Senator EAGLETON. All right.

Now, as part of the administration's transition team on civil rights, you said the following:

> In essence, EEOC has extended its authority to include voluntary affirmative action in the private sector without constitutional or statutory basis. Moreover, the assumption that this approach would help minorities and women overcome disadvantages caused by past discrimination has not been verified or reassessed.

How do you square that statement with your belief that the *Weber* case is the law of the land and, as such, it is your duty to enforce the law of the land as written and as enunciated and declared by the U.S. Supreme Court?

Mr. THOMAS. It was my understanding that in the *Weber* case it was not a case that the EEOC imposed anything on the private sector or on the labor union involved or on the individuals involved but, rather, whether or not their activities, their private activities, violated title VII. So that is separate and apart from the EEOC.

Senator EAGLETON. But the Chairman of the EEOC, with the great influence that he has in employment matters, can use the significant weight of his office to see that the *Weber* doctrine is as widely pursued in the private sector as is humanly possible. Will you use the prestige and great weight of your position to see that the *Weber* doctrine is given life and vibrancy throughout the private sector?

Mr. THOMAS. Senator, that is something that I would have to look at before I comment on it, before I would lock myself into a position.

Senator EAGLETON. Well, don't you realize, as Chairman of the EEOC, you become one of the principal spokesmen on civil rights in this country; that in a country of 200 million-plus citizens, next to the Attorney General himself, who is gagged on civil rights—if he has a view on it, he wouldn't dare utter it—next to the Assistant Attorney General, Mr. Reynolds, who is trying to march this country back into the 19th century; you are the principal civil rights spokesman in this country by reason of your chairmanship?

So there is power and prestige and influence that goes with the position that you hold. Are you not going to use your office to try

to influence America in terms of providing greater opportunity of access by blacks, Hispanics, and women into America's workplace?

Mr. THOMAS. Senator, I will indeed do that, but I don't think that the methods pursued in the *Weber* case are necessarily the only ways to pursue that.

Senator EAGLETON. I didn't say the *Weber* case ruled as a doctrine of exclusivity. I didn't say that this was the only channel by which equal access can be gained into the private sector. It opened up a new and additional channel over and beyond the traditional either compulsory or arbitrated enforcement channels. It opened up a whole new wave of opportunity for the private sector, without the threat, intimidation, or even inducement of the governmental sector, to provide equal access to blacks, Hispanics, and women. Are you not going to use the prestige of your office to see that, in the private sector, blacks, Hispanics, and women are given a better deal?

Mr. THOMAS. I certainly will, Senator.

Senator EAGLETON. Assistant Attorney General Reynolds testified earlier this year before the House Employment Opportunities Subcommittee that the administration no longer intends to seek goals and timetables as a remedy in job discrimination suits. This stated policy differs from the position of the Equal Employment Opportunity Commission in previous employment discrimination litigation where remedial goals and timetables have routinely been sought.

As the Chairman of the EEOC, what approach will you take?

Mr. THOMAS. Senator, I believe that there has been an overemphasis on statistical parity. In my present job, however, I have found that the need for data, the need for goals, for monitoring progress, are there.

Senator EAGLETON. How about a timetable? How do you monitor without looking at the calendar?

Mr. THOMAS. That was an oversight as opposed to intentional.

Senator EAGLETON. So if one is to monitor compliance by company X or industry X, if it be an industrywide action, A, one has to have some goals—some of them are self-evident—to get a significantly larger number of blacks, Hispanics, and women into the work force at that company or that industry. And one has to have some kind of a timetable to use as a benchmark in order to monitor compliance. Is that not correct?

Mr. THOMAS. That is right, Senator.

I think, again, as I indicated to you, that there has been an overreliance on statistical parity at the educational level and at the employment level.

Senator EAGLETON. The administration's transition team—once again, you served on it—this is the one on civil rights—called for wholesale cutbacks at EEOC and recommended a year-long moratorium on litigation and regulations. Do you support the recommendations of that transition team in that respect?

Mr. THOMAS. It is my view that that recommendation was stated to make it clear that the EEOC should be brought under some sort of control and that it should reconsider some of its policies. I don't think that external forces on an agency such as arbitrary cuts in

the budgets, arbitrary reductions in regulations, et cetera, necessarily promote an effective operation of the organization.

I do not use that statement as a guiding light for my operation of the organization or leadership of the organization.

Senator EAGLETON. Now, in answer to a question by Senator Hatch, you used the language, you didn't want to be—and I wrote it down—you didn't want to be overly burdensome to the private sector. In testifying before this committee, with respect to the position you now hold, you used this language. This is for your present job.

"Thomas: 'My job, then, is to enforce those laws in the "least intrusive manner.'" My job is to enforce those laws in the least intrusive manner. This morning, you say you don't want to be overly burdensome to the private sector."

Mr. Thomas, I submit to you that the job that you are about to embark upon is not a job of being a benign overseer. It is your job to use your office as vigorously as you can to see that minorities have access to employment opportunities in this country. If that intrudes on the cozy corporate policy of company X, or if that is burdensome to the cozy corporate policy of company X, then this committee ought to know what your philosophy is.

You know, I meet with a lot of corporate people. It does not take much for them to think you are intruding on them. It does not take much for them to think that you are creating burdens for them. So your job is not one to curry favor with corporate America; your job is to try to see to it that blacks, Hispanics, and minorities and women have equal opportunity for employment with corporation X or industry X. I am troubled by this "least intrusive manner, overly burdensome to the private sector."

Mr. THOMAS. First of all, Senator, I do not have a history of currying favor with anybody.

Second, with respect to my statements, I believe that someone in a position such as Chairman of the EEOC should be vigorous in the enforcement of civil rights laws, but not reckless. I think that there have been occasions when individuals have been reckless. I think that does great harm to the civil rights laws and brings those laws under unnecessary attacks.

With respect to my statement to Senator Hatch, I indicated that I believed that in multijurisdictional cases the efforts should be coordinated rather than having a number of investigations of one company emanating from various agencies at different times, at different paces. I think that that can be unnecessarily burdensome and that the civil rights laws can be done more justice and can be more effectively enforced by a coordinated effort.

Senator EAGLETON. So, in enforcing the law and doing your duties, if some company were to call you up and say, Gee, you're getting overly burdensome; Gee, you're getting awfully intrusive; you wouldn't let that phone call or series of phone calls or series of letters from that company, using words like "burdensome" and "intrusive," deter you from your sworn obligation, would you?

Mr. THOMAS. Never.

Senator EAGLETON. Now, let me read you a fairly long quote from Eleanor Holmes Norton. I think, in my own personal judgment—and everyone is entitled to his own personal judgment—she

was by far the most effective Chairman of the EEOC that the Commission has ever had during its history. Let me read this quote to you from Mrs. Norton. If you want to take notes—not verbatim as to the quote—but if you want to take notes as to any sentence or section of this quote with which you disagree, that would be fine, because I am going to ask you at the end of the quote whether the philosophy as reflected in this quote is the same as yours, or in what respect you would disagree with Mrs. Norton.

Mrs. Norton says:

Affirmative action is really a set of techniques for rectifying discrimination which consist mainly of forcing personnel systems.

She used the word "forcing"—

To become more objective and to eliminate preferences built in not necessarily viciously but because of the way society was organized.

In the past, pools that seemed most readily available were white male pools to do the important work. The only way the personnel systems adapt to other pools is to engage in affirmative action techniques.

Really, affirmative action techniques are quite diverse.

[A copy of the quotation was handed to the witness.]

Senator EAGLETON. Good. I didn't know we had extra copies. That is great. Give one to Senator Hatch. This would be good for him to hear. [Laughter.]

The CHAIRMAN. I am always interested in listening to my colleague from Missouri.

Senator EAGLETON. To Eleanor Holmes Norton. I know you are. You and Eleanor got along real good.

The CHAIRMAN. Well, I thought I did, but she didn't.

Senator EAGLETON. All right, I will go ahead. I am glad you have the text out there, Mr. Thomas.

Really, affirmative action techniques are quite diverse. Goals and timetables or, in some instances, the courts have ordered quotas, are a tiny portion, really.

Affirmative action techniques include eliminating credentials or tests that are not related to the job to be performed; enlarging the pool from which the selection is made so that the pool for middle management, for example, does not consist of only white males but consists, rather, of a diversity of people from whom the best qualified should be chosen.

For example, if an employer has hardly any minorities and women, that employer is going to have to recruit in a very vigorous way from the excluded groups. And, in order to know that he is doing it and his personnel system itself is being reformed so that it no longer reaches for one or two kinds of people, you use goals and timetables to track the reform of a personnel system, just like we track other things by numbers.

The numbers are, really, a tracking and monitoring mechanism as opposed to the way they have been interpreted, as a quota mechanism. If the numbers are reasonably set, they ought to be able to be met in the normal course of things, simply by being fair and relatively scientific in the way one reaches out, because the goals and timetables reflect the available pool of qualified workers from the excluded group. They are not simply arbitrary figures.

I know that is a very long quotation from Mrs. Norton, but I thought, in very straightforward English, it spelled out at least what I conceive was the Congress intent when it set up the Equal Employment Opportunity Commission back in the 1960's.

Now, having read that long quote, can you comment on your approach as distinct or as concurrent with the approach of Eleanor Holmes Norton?

Mr. THOMAS. I believe that tnat quote assumes that when you have statistical disparities at the employment level, that statistical

disparity necessarily flows from discrimination or conduct at that level. I do not think that, in all cases, that is accurate. In some cases, or in many cases, it may be accurate.

I believe that you could assume, again, by looking at numbers or by relying strictly on statistical variations, in a rigid construct, that white players are being excluded from the NBA, or they are being discriminated against in some way. You could assume that, for some reasons, blacks are being excluded from National Airport.

There are other problems, underlying problems, which you know and I know prevent the representation of blacks in certain areas. For example, I believe that in the area of engineering, the underrepresentation occurs before the employment sector, and it should be a part of the organization, or an organization such as EEOC, to identify where the problem occurs, where the breakdown occurs, even if it is not at the employment level.

I do not disagree with Mrs. Norton that efforts have to be undertaken to increase the representation. Again, though, I do not believe that those efforts necessarily should be directed at the employment level. Where in those instances we find that the problem occurs at the employment level, then I believe that we have the capability and we have the obligation and the duty to see to it that remedial steps are taken to remedy it at that level.

Senator EAGLETON. Well, let me probe a little more deeply, then, into this subject matter. Let me do it by illustrative cases.

There are very few black architects in the country. Is that not the case?

Mr. THOMAS. I don't have any data to support a number.

Senator EAGLETON. It is a minuscule number. Therefore, if a complaint were lodged with EEOC that architectural firm HOK had only one black architect out of 100 architects on their professional staff, but there are only a paltry few black architects in the country, then that fact affects the eligible pool. Hence, if a company that only had one black architect, that might be all that are available for that company to hire. Commonsense would lead you to that conclusion, would it not?

Mr. THOMAS. It could lead to that conclusion.

Senator EAGLETON. What if a major metropolitan newspaper in this country had 1 black reporter out of a staff of 100-plus reporters, but had only 1 black reporter and, say, 3 female reporters. Would your approach to what the eligible pool is for that newspaper be somewhat different than your approach to the eligible pool for the architectural firm?

Mr. THOMAS. I think, particularly, in those kinds of instances where it is not a specialty field, you would have a different set of questions as to where the breakdown occurs, whether or not, indeed, it is at the employment level. As a profession becomes less and less specialized——

Senator EAGLETON. Less and less what? I am sorry, I didn't get that.

Mr. THOMAS. Specialized, and requires less training or preparation and has more chance of a representation of the protected groups, then I think your inquiry would differ significantly from the situation of the architect, which requires, of course, specialized training.

Senator EAGLETON. But in both of those cases, both of those hypothetical cases, numbers can be useful in forming a judgment as to what the available pool of talent is for job opportunities at a given workplace. Isn't that correct?

Mr. THOMAS. Precisely, but numbers can lead to different sets of assumptions, and the assumptions should be investigated. That is the point I am trying to make. You cannot limit yourself to one assumption, and that is, because of the lack of representation at the employment level, that the problem actually occurs at that level. It may occur long before the employment level.

Senator EAGLETON. You, yourself, mentioned the situation of engineers. It is a sad tragedy of American life that very few blacks seek admission to schools of engineering, and very few blacks, consequently, are admitted to schools of engineering. Hence, for instance, in today's recessionary world, where job opportunities are increasingly scarce, there is one still booming area—there are a couple of others as well—but engineering is clearly booming. If you have a degree in engineering, you have a lot of job opportunities in this country, regardless of your race, religion, sex, or what have you. There are lots of jobs out there for engineers, yet few black graduates in engineering; hence, not many blacks are employed in the engineering field.

So numbers and pools, et cetera, have to be analyzed in the context and environment that is under consideration. Is that not correct?

Mr. THOMAS. That is correct, Senator, and in fact, with respect to engineers again, what we have found is that the breakdown occurs long before the employment level. We find that minorities tend to steer away from mathematics, even as early as the secondary school level, and at the postsecondary level, there are even fewer minorities in the math-related areas, and the underrepresentation continues through the employment sector.

Senator EAGLETON. You are absolutely correct.

Mr. THOMAS. So my point is that the assumptions you draw from the representation at the employment levels depend, in a lot of instances, on the individual circumstances or individual cases.

Senator EAGLETON. Now, you are a very good lawyer, and I believe that to be the case, a graduate of one of the great law schools—you know, if you couldn't go to Harvard, you went to a pretty good law school. [Laughter.]

The CHAIRMAN. Maybe that is why you have such a good philosophy. [Laughter.]

Senator EAGLETON. He went to the school I couldn't get in. [Laughter.]

Let me ask this question on the equal protection clause of the Constitution. To me, this country could probably survive without various hunks of the U.S. Constitution, but it could not survive without the first 10 amendments and the 14th. The 14th contains the equal protection clause.

Do you believe, as a lawyer, that Congress can statutorily impose a time limit on the equal protection clause, to be specific, a 15-minute time limit on the clause, saying that the clause shall have meaning and life for up to and including 15 minutes but not beyond?

Mr. THOMAS. I don't think so.

Senator EAGLETON. Well, I think you are absolutely right. Thus, whenever this dreadful statute that the Senate passed the other day that put a 15-minute time limit on the equal protection clause gets before the U.S. Supreme Court if, God forbid, it is passed over in the House and signed by the President, even William Rehnquist will say that you cannot put a 15-minute time limit on the equal protection clause.

I will conclude with this, Mr. Thomas. I think you are a very, very intelligent individual, impeccably honest, totally sincere, completely dedicated, honorable in every positive respect that should be applied to a public official.

I think you are assuming this position as chairman of the EEOC in very trying times for economic reasons and philosophical reasons. That is why I probed fairly deeply into your philosophy and the philosophy of other fine Americans who have commented on the civil rights posture of this country.

This administration has the most dreadful reputation in modern times with respect to civil rights and civil liberties. Whether it is justified or unjustified that it has that reputation, nonetheless, that dreadful reputation is there. Black America has given up on President Reagan; it has given up on the U.S. Department of Justice, to which it used to turn for help and assistance; it feels not only benignly neglected, but it feels that it is being treated in an aggressively and conscientiously negative way.

Once again, whether that feeling comes from wisdom or from misinterpretation, nonetheless, the feeling is there. That feeling exists in St. Louis; it exists in Kansas City, a State that you know very well because you have lived and worked there for some years; it exists everywhere around this country.

You are black America's last hope as far as this administration is concerned. You are black America's last chance to believe that someone in this Government is on its side. They don't believe it at 1600 Pennsylvania Avenue, and they don't believe it down at the Justice Department.

You have tremendous responsibilities. You cannot carry this burden alone, I realize. The office that you hold, powerful as it is, is not omnipotent. You cannot do everything. But you can perform in the area that the law has been assigned to you, and if you do the kind of job that your whole record and that your whole character would reflect that you can do—sincerely, conscientiously, forthrightly—you will be striking a great blow for freedom and fair play.

I believe you will do it. Although your philosophy and mine are quite disparate; nonetheless, I think you have character and you have guts, and the job you are about to embark upon requires an abundance of both.

That is all I have, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator Eagleton. We appreciate your interrogation.

Mr. Thomas, we have had a lot of comment about black America, and I agree that you are a hope for black Americans, but do you consider this position as a position solely to help black Americans?

Mr. THOMAS. I consider it a position to see to it that there is equal employment opportunity in this country for all Americans.

The CHAIRMAN. For all people.

Mr. THOMAS. That is right.

The CHAIRMAN. I might mention, there are some Hispanic people, some women in this country and others, who feel that the EEOC has worried more about black Americans than it has about minorities and women across the board.

I take it that you have indicated here today that you intend to work equally for all of these people.

Mr. THOMAS. Precisely.

The CHAIRMAN. All right. Thank you so much. We appreciate your time, we appreciate your testimony, and we appreciate the interrogation you have had to go through, because this is an important position.

Personally, I think you are an excellent choice for this position. I agree, you have guts and you have ability; I think it is a tremendous compliment. I think Senator Eagleton, though giving you a very difficult examination, has paid you some tremendous compliments.

So, with that, we will excuse you as a witness at this point unless the committee——

Senator EAGLETON. Mr. Chairman, as far as I am concerned, in order to get Mr. Thomas as quickly on the job as possible, it will be perfectly fine with me if his nomination be polled. But I cannot speak for Senator Kennedy; I know that is not my role.

The CHAIRMAN. I would appreciate that, and I appreciate your saying that.

Senator EAGLETON. But I would like to get him on the job, in the job, as soon as is humanly possible.

The CHAIRMAN. So would I.

Well, thank you, Mr. Thomas. We appreciate having you here today.

We have one other witness with regard to your nomination, Mr. Arnold Torres, the executive director of LULAC, the League of United Latin American Citizens.

Mr. Torres, if we could ask you to summarize in 5 minutes or less, we will put your complete statement in the record, and then we can get on to our hearing on the health reauthorization.

We appreciate having you with us today, and we will look forward to taking your statement at this time. Without objection, his complete statement will be placed in the record.

STATEMENT OF ARNOLD S. TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TORRES. My name is Arnold S. Torres. I am the national executive director of the League of United Latin American Citizens, this country's oldest and largest Hispanic organization. I believe the chairman is somewhat familiar with us in view of his hearings on other subjects on this committee as well as within the Judiciary Committee and our participation in some of those hearings.

I feel somewhat uncomfortable coming before the committee after Mr. Eagleton has asked extremely probing questions and has

summarized with his suggestion that Mr. Thomas be polled immediately in order to get him on the job as quickly as possible. I thought that the probing would have signaled a need to perhaps probe a little bit further as well as into other areas.

We have worked on matters within the EEOC for a while. We worked very hard on the nomination of Mr. Bell, William Bell, the previous nomination, to chair the EEOC and were successful, along with other organizations, in keeping Mr. Bell outside of Government service.

I really do not know where to begin. I think that it was truly unfortunate that this hearing was not given 7-day notice. I am aware of the difficulties with that process as exhibited on Monday. But, nonetheless, I felt, as well as other organizations felt, that we should have given somewhat more time in order to prepare because of the time that we have invested in this nomination.

I find it very difficult to be very brief, Mr. Chairman, because I am, frankly, extremely concerned about the nomination. I do not come necessarily to oppose the nomination at this time. I felt very strongly that this process of confirmation hearings should be one in which serious questioning of a nominee who philosophically has a different perspective than what we have had in the position in the past but, more importantly, has in our opinion done a somewhat dismal job as the Assistant Secretary for Civil Rights in the Department of Education.

We cite simply the letter that was done by the U.S. Commission on Civil Rights that indicated a number of less-than-aggressive enforcement of the law. The letter was of February 12, 1982.

We cite the fact that Mr. Thomas was found not adhering to the *Adams* court case, *Adams* timeframes. We find that even though, when we met with him 2½ weeks after his nomination was announced, then, as he did today, he stressed management. If we look at his record of management at the Office of Civil Rights in the Department of Education, we find, I believe, one study that has been recommended by him, which is usually the procedure that is followed by any Assistant Secretary going to that job.

We find, in a study done by the Inspector General, that the Office of Civil Rights has been described as being more complaint-oriented than enforcement-oriented. We also find that there are a number of problems in some of the regional offices with regard to management. We look at an article that appeared in the Dallas Morning News in which there was the title, "Sex, Race Bias Investigated in Rights Office."

I had the opportunity to travel to Dallas last Friday to meet with the regional director, Mr. Taylor August, as well as some of his supervisors; specifically, Mr. Gonzalez and Mr. Bell. We tried to somehow better assess what the origin of the problem was in that regional office.

We find that the management problem is significant in that office, and we find that very little assistance or direction has been provided by the central office. We find in a statement by Mr. Thomas the role which the EEOC plays in assuring equal employment opportunity through enforcement of the title VII of the Civil Rights Act, equal pay, age discrimination. He goes on to talk about race, religion, sex. Nowhere did he mention national origin.

Now, your question was a very good question about insensitivity to Hispanics. Mr. Thomas replied, "I give no credence, or there is no credence in that contention." Perhaps Mr. Thomas' insensitivity is less blatant than we would believe it to be, because he omits national origin. National origin has its own little reporting system for when there are complaints of national origin in employment discrimination.

We also find that in his personal statements today in response to questions, we find no mention of national origin. We also look at the simple fact of what the Office of Civil Rights has done with regard to investigations in educational discrimination in the Southwest and other parts of the country, and we find that the most important report that they issued on the Southwest, specifically in Texas, it is our understanding that the letter of finding is somewhat significantly different than the report's findings are.

So we do find somewhat of a discrepancy in Mr. Thomas' statement that there is no credence to our contention of insensitivity, and we find it very, very important to raise these issues but, more importantly, to try to keep the record open over the Easter recess and perhaps have another hearing to probe a little bit more into these issues.

I am not going to argue the philosophical statements or follow the line of concerns that the Senator from Missouri has. I think he has done a very good job in that regard.

But I think that if we concentrate more and examine indepth Mr. Thomas' management abilities, Mr. Thomas' serious—as evidenced by his actual working commitment to enforcing the law, we do find that there are some serious questions that need to be answered by him. We are very concerned that, as an individual who in our opinion has done less than a credible job at the Office of Civil Rights in the Department of Education, that this should somehow worry this committee that also has jurisdiction over that department, and that some line of questioning should follow before Mr. Thomas is confirmed in another position.

I could give you a number of things, Mr. Chairman. I have a number of memos. We have tried to develop questions. But because we were not informed of this hearing until yesterday at 10:30—in fact I had to call the committee in order to find out that it was scheduled for today at 9:30—I was frankly surprised and angered that this was going to proceed under that timeframe.

I would appeal to your sense of fair play, Mr. Chairman, to hold this record open over the Easter recess and that another hearing follow in order to allow a much broader discussion of some of the issues that I have raised today.

I would like to simply conclude by saying that we are aware that the President of this country and this administration does not necessarily share our philosophical views of equal employment opportunity, affirmative action, of enforcement of civil rights laws. That is his privilege. He has his philosophy. But where we cannot deviate is where the commitment and the actual enforcement of existing laws come into play.

In this case, we find a serious deviation at times from enforcement of the law. We see the Department of Education holding onto a number of cases, a number of handicap cases. We see the Assist-

ant Secretary crossing out portions of memos recommending specific things that are consistent with the law with regard to the handicapped. We see a number of things that, unfortunately, under this time frame, we have not been able to convey to the members of this committee and to their staffs for closer scrutiny.

So we appeal to you, Mr. Chairman, to please hold this record open over the Easter recess and to come in with another hearing. I would simply end with this statement. We in our organization will not allow the standard that we have had in the past of equal employment opportunity and affirmative action, and the standards that nominess have been held to in the past administrations, to be in any way tampered with, nor will we step away from that standard and allow someone who is less committed to be appointed to these positions.

We evidenced that commitment on the Bell nomination and we will again on any other nominations that come before this committee or any other in the Senate.

I thank you for the opportunity. I would hope that somehow you will be convinced, in your sense of fair play, to keep the record open and that another hearing can be held.

The CHAIRMAN. Thank you, Mr. Torres.

I have to mention to you that we have had the notice out for a week, but for some reason, apparently, you did not know about it. We will take that under consideration.

This is a very important position. We do need to get it filled. It has been held up now for a considerable length of time. I think it benefits you to have it filled.

I have asked some very tough questions myself with respect to all groups that this agency works with, and I think sometimes we do have a tendency to just say black Americans. I think that is very important, but there are other minority groups as well, and women, that this agency has to help.

Mr. TORRES. But I would like to clarify. I did not come here to say that the issue that we wanted to raise primarily was the insensitivity to Mr. Thomas' views of Hispanics or women.

The CHAIRMAN. Oh, I understand.

Mr. TORRES. I wanted to underscore the fact that he very clearly said that he wasn't; yet I did not see mention of any national origin, and that somewhat concerns us because of his insistence that he is not insensitive, and yet I don't see any mention of it. That, to us, is an insensitive act.

The other thing, and it is more important than that, is simply the principle of who is nominated and who is appointed to these positions. If an individual comes before this committee or any other committee and says, "I am going to stress management; management is very important to me; I am committed to enforcing the law"—and then we look at the background and we look at, step by step, what actions have been taken, and we see no reinforcement of those contentions; I would think any person, regardless of what his philosophy is, would have some serious reservations, and that is all we are trying to present to you.

The CHAIRMAN. We understand.

Mr. TORRES. You have a Commission that has been acting. You have an acting commissioner now. I don't think there is a need to

have to go this week and appoint, poll him out of the committee. There really is not any need.

The CHAIRMAN. We will take your recommendation under consideration. I do not know what the final result is going to be.

Mr. TORRES. Thank you very much.

The CHAIRMAN. We appreciate your coming, we appreciate your testifying, and we appreciate the kind manner in which you did testify.

Mr. TORRES. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you for coming.

We have a vote on the floor of the U.S. Senate. I thought that this initial hearing would take a lot less time than it has in fact taken.

The second part of our hearing this morning is extremely important as well, so what I am going to have to do is recess so I can go and vote, and then I will come right back, so we will recess for about 10 minutes, and then we will be right back, and we hope that we can move ahead.

[Additional material supplied for the record follows:]

April 22, 1982

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

Attached are my responses to the questions Senator Heinz, Chairman, Special Committee on Aging, sent you to forward to me. Should he have any additional questions after my confirmation, I shall be pleased to meet with him at his earliest convenience.

Sincerely,

Clarence Thomas

Attachments

1. Do you think that the EEOC's current system of rapid charge processing and fact finding is appropriate for the resolution of ADEA charges? If not, what types of procedural reforms in the area of ADEA charge processing do you contemplate?

   The Commission currently utilizes rapid charge processing and fact finding procedures to resolve its ADEA charges. These procedures, which were instituted in all the Commission's District Offices a few months ago, appear to be working successfully.

2. Are you familiar with the EEOC's ADEA litigation program? What is your assessment of that program?

   I do not have sufficient information on EEOC's ADEA litigation program to be able to assess it at this time.

3. Are there any major substantive or policy questions with respect to ADEA enforcement where you believe the Commission has neglected to provide guidance or engage in enforcement action? How do you propose to deal with these issues? Do you envision the Commission taking any major policy initiatives under the ADEA?

   I have no knowledge that the Commission has neglected to provide guidance or engage in enforcement action for any major substantive or policy questions with respect to the ADEA. I do not presently envision the Commission taking any major policy initiatives under the ADEA.

4. Do you disagree with any of the EEOC's existing policies under the ADEA (expressed through substantive regulations, exemptions, or cases in litigation)? If the answer is yes, specify the area of disagreement and the measures you will propose for reversing or reconciling these policies.

   Although I am not familiar with all of EEOC's existing policies under the ADEA as expressed in the Commission's substantive regulations, exemptions or litigation, I do not believe that there exists any disagreement between my ADEA policy positions and the Commission's.

5. Do you perceive any conflicts between the Commission's enforcement role under Title VII and its role under the ADEA? If so, describe the conflict and the measures you propose for reconciling these conflicts.

   Based upon what I understand at this time, I do not perceive any conflicts between the Commission's enforcement role under Title VII and its role under the ADEA.

6. Do you believe the Commission has allocated sufficient resources (i.e., both money and staff) to its ADEA enforcement program? Identify any imbalances which you perceive and specify how you propose to rectify these.

   I must reserve my comment on this question until after I have assumed the Chairmanship of EEOC and have had the opportunity to review and assess the amount of resources presently being dedicated to this program.

   I will be happy to share the results of my review and assessment with you as soon as they are available.

7. Do you believe the ADEA itself should be amended? If so, specify the amendments you believe to be appropriate and the reasons for that belief.

   President Reagan, speaking recently at a ceremony to proclaim May as Older Americans Month, said he supports legislation to remove the upper age limit in the ADEA. I also support removing this limit.

JOHN HEINZ, PA., CHAIRMAN
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United States Senate

SPECIAL COMMITTEE ON AGING
WASHINGTON, D.C. 20510

April 14, 1982

The Honorable Orrin Hatch, Chairman
Committee on Labor and Human Resources
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Special Committee on Aging is currently engaged in comprehensive oversight activities with respect to the Equal Employment Opportunity Commission's enforcement of the Age Discrimination in Employment Act. As you are aware, age discrimination charges constitute a significant portion of the EEOC's caseload indeed, the age jurisdiction is the fastest growing of all civil rights enforcement statutes. The magnitude of the problem of age discrimination as well as the increasing importance of enforcement measures designed to combat such discriminatory practices underscore the necessity for the EEOC to engage in sound policy development, to utilize effective charge-processing systems, and to undertake a meaningful enforcement program through carefully selected litigation vehicles.

Because these activities are of such critical importance, the Special Committee on Aging requests that you propound the following written questions to Mr. Clarence Thomas, the President's nominee for EEOC Chairman. I understand that the Committee on Labor and Human Resources conducted hearings on Mr. Thomas' nomination on Wednesday, March 31. I would appreciate your including these questions and Mr. Thomas' responses in the final record of these confirmation proceedings.

1. Do you think that the EEOC's current system of rapid charge processing and fact finding is appropriate for the resolution of ADEA charges? If not, what types of procedural reforms in the area of ADEA charge processing do you contemplate?

2. Are you familiar with the EEOC's ADEA litigation program? What is your assessment of that program?

3. Are there any major substantive or policy questions with respect to ADEA enforcement where you believe the Commission has neglected to provide guidance or engage in enforcement action? How do you propose to deal with these issues? Do you envision the Commission taking any major policy initiatives under the ADEA?

4. Do you disagree with any of the EEOC's existing policies under the ADEA (expressed through substantive regulations, exemptions, or cases in litigation)? If the answer is yes, specify the area of disagreement and the measures you will propose for reversing or reconciling these policies.

5. Do you perceive any conflicts between the Commission's enforcement role under Title VII and its role under the ADEA? If so, describe the conflict

and the measures you propose for reconciling these conflicts.

6. Do you believe the Commission has allocated sufficient resources (i.e., both money and staff) to its ADEA enforcement program? Identify any imbalances which you perceive and specify how you propose to rectify these.

7. Do you believe the ADEA itself should be amended? If so, specify the amendments you believe to be appropriate and the reasons for that belief.

We look forward to receiving the responses to these questions. The information will undoubtedly be very beneficial to the Senate's deliberations on this nomination, as well as to our own age oversight activities. Thank you very much for your cooperation.

Sincerely,

JOHN HEINZ
Chairman

JH/cot

QUESTIONS FOR MR. THOMAS SUBMITTED BY SENATOR KENNEDY

1) This Administration has sought to re-emphasize voluntary compliance as a means of correcting employment discrimination. Please state in detail your understanding of the voluntary compliance concept.

2) The Regulatory Reform Task Force chaired by Vice President Bush is reviewing the EEOC's guidelines on sexual harrassment and uniform selection. What is your understanding of the Task Force's agenda and your relationship to the Task Force with regard to these guidelines. Will you consult with this Committee before any final action is taken on these guidelines?

3) Do you believe that remedies sought to redress employment discrimination should be limited to individual victims of discrimination?

4) It has been asserted that EEO paperwork requirements are placing a substantial burden on employers. Do you agree? What are your plans in this regard?

April 1, 1982

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C. 20510

Dear Chairman Hatch:

Attached are my responses to the written questions submitted to me at the March 31, 1982, conformation hearing held on my nomination for the Equal Employment Opportunity Commission.

Sincerely,

Clarence Thomas

Attachments

Questions submitted by Chairman Hatch

NORTH HAVEN BOARD OF EDUCATION V. BELL

8. In your capacity as head of the Office of Civil Rights at the Department of Education, you must be familiar with the North Haven case that was argued before the Supreme Court this term. The issue in the case is whether Title IX of the Education Amendments of 1972 prohibits sex discrimination in the employment practices in federally assisted education programs even where the primary objective of the federal financial assistance is not to provide employment

The school board argued that employment discrimination should be covered by Title VII of the 1964 Civil Rights Act, which specifically deals with employment discrimination. The Solicitor General's brief took the position that the employment practices of federal funds recipients are generally covered and subject to the jurisdiction of the Department of Education. But in a footnote to the Solicitor's brief, it states that the Department of Education feels that DOE has only limited expertise in this area, and that employment matters are better resolved under Title VII.

1. What is your position on this difference of opinion between the Departments of Justice and Education?

2. Wouldn't it cause much less confusion and inconsistency in EEO enforcement if the Department of Education and other Executive departments were to get out of the employment discrimination business altogether and leave such cases up to EEOC?

The Solicitor General is correct in his view that the employment practices of Federal funds recipients are covered by Title IX and subject to the jurisdiction of the Department of Education. It is also true that the Department of Education's expertise in employment discrimination matters is more limited than that of the EEOC, and that cases involving pure employment discrimination issues may be better resolved by EEOC under Title VII.

While I believe that it would cause less confusion and inconsistency in EEO enforcement if Executive departments were to "get out of the employment discrimination business" and leave those cases to the EEOC, we must be careful to insure that no diminution in the coverage of existing laws results from efforts to reduce the number of Executive departments involved.

INTERPRETIVE GUIDELINES

9. The Commission has been repeatedly criticized by Members of this Committee and others for issuing regulations which are contrary to or undercut the substantive holdings of court decisions.

Of particular concern are portions of its Guidelines on Sexual Harassment, Pregnancy Discrimination, Accommodation of Religious Beliefs, and the Age Discrimination in Employment Act. At several points these guidelines do not reflect existing law. Rather they appear to state what the Commission staff feels the law ought to be. Do you intend to leave these guidelines in place or do you intend to subject them to a thorough review.

When will you be able to report back to this Committee your findings.

In your role as Chairman, what steps will you take to insure that any future guidelines by the Commission reflect existing law?

EEOC's purpose in issuing Title VII guidelines is to provide persons subject to Title VII a clearer understanding of the obligations imposed on them by this law. To accomplish this purpose, each Title VII guideline must be periodically reviewed to determine if it is consistent with current case law, since any guideline or any provision of a guideline contrary to a final judicial holding is void and if left unchanged, confusing to those persons subject to the law.

President Reagan's Presidential Task Force on Regulatory Relief has requested that two of the Commission's present guidelines (Uniform Guidelines on Employee Selection Procedures and Sexual Harassment Guidelines) be reviewed pursuant to Section 3(1) of Executive Order 12291. As Chairman, I intend to see that these reviews not only fully comport with the requirements of the Executive Order but also encompass the concerns expressed in your question.

I will initiate a review of the Commission's other guidelines after I assume office to determine their compliance with existing case law. I will report these findings to you as soon as they are available.

I assure you that I will do all that I can in my role as Chairman to insure that all future Commission guidelines reflect existing law where there is a final judicial holding on an issue.

CONNECTICUT V. TEAL — THE BOTTOM LINE CONCEPT

10. This week the Supreme Court heard oral argument in the Teal case. The case involved a finding by the Second Circuit that the employer's written test was discriminatory because it had an adverse impact on minorities, even though the overall selection process for specific job resulted in a selection rate for minorities that was almost twice that of Whites.

The Solicitor General argued that the employer could defend against the discrimination charge by its showing that the selection process, as a whole, did not have a discriminatory impact.

The first footnote in the Solicitor General's brief stated: "The EEOC has declined to join in this brief." What would your position be on the bottom line issue: That is — if the overall effect of a selection process does not favor Whites over minorities, should the EEOC still bring suits challenging the selection process.

If you don't favor the botton line concept, how do you square that position with the Uniform Employee Selection Guidelines that say that where the bottom line shows no adverse impact, then the government agencies should exercise their prosecutorial discretion and not challenge the selection process.

The Uniform Guidelines on Employee Selection Procedures that four Federal agencies (Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor and Department of Justice) adopted in August 1978 reflect the Federal government's assessment of the requirements of Title VII in the area of employee selection procedures. They remain the official policy of EEOC. As Chairman, I will administer and enforce the Commission's policy adopted in these guidelines.

INCONSISTENT GOVERNMENT POSITIONS

11. At other points in the hearings we have discussed some differences of opinions between the Executive Branch on equal employment enforcement. These are troublesome, and don't give us a great deal of guidance, for example:

1. In the North Haven case, the Department of Education differed with the Solicitor General over whether the Department of Education should regulate employment discrimination;

2. In Connecticut v. Teal, the EEOC refused to join the brief favoring the bottom line approach when analyzing the effects of the employer's selection process.

3. EEOC's name did not appear on the government's amicus brief in General Telephone Company V. Falcon which deals with Title VII class action issues;

4. There appears to be an inconsistency between the Justice Department on the one hand, and EEOC and the Department of Labor on the other, on if, and under what circumstances preferential treatment or numerical remedies can be used to eliminate workforce racial imbalances.

In the oral argument in the North Haven case, Justice Powell suggested that the split of opinion between government agencies was unseemly and he suggested that the Executive Branch "get its act together." Do you have any suggestions that might bring about a resolution of some of these conflicts or don't you think a problem exists.

The responsibility to provide leadership and coordination to Federal agencies administering equal employment opportunity laws given to EEOC in Reorganization Plan No. 1 of 1978 and Executive Order 12067 was reaffirmed last summer by the present Administration in an exchange of letters between EEOC's Acting Chairman and OMB's Director for Information and Regulatory Affairs. The leadership position which the Plan and the Executive Order give to the Commission can and should be used to eliminate inconsistency in compliance policies and enforcement actions among the Federal agencies administering Federal equal employment opportunity laws.

Questions submitted by Senator Eagleton

1. Where do you see the need, if any, for improvement in the EEOC's litigation capacity?

While I believe the Commission is an enforcement agency and should function as such, I do not have sufficient information on the Commission's litigation capacity at this time that enables me to comment on its ability to enforce, through litigation, the EEO statutes it administers.

2. The Presidential Regulatory Task Force on Regulatory Relief has requested that EEOC review its Guidelines on Sexual Harassment and Uniform Employee Selection Procedures. What is your understanding of the Task Force's agenda with regard to these guidelines? Can we have your assurance that you will consult with this Committee before any final action is taken on these guidelines.

I understand that the review of EEOC's Guidelines on Sexual Harassment and Uniform Guidelines on Employee Selection Procedures requested by the Presidential Task Force on Regulatory Relief has not yet begun and that a new work plan for accomplishing the reviews must be developed.

I will be happy to discuss with the Committee any proposed final Commission action taken on these guidelines as a result of these two reviews.

The CHAIRMAN. The hearing is now adjourned.

[Whereupon, at 11:11 a.m., the committee recessed, to reconvene at the call of the Chair.]

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